

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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Nov 20 2020

SC Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas
The Honorable Marvin H. Dukes, III, Master in Equity

Case No. 2014-CP-07-0052
Appellate Case No. 2019-001270

Lady Beaufort, LLC & Tideland Realty, Inc.,.....Appellants,

v.

Hird Island Investments, Inc., Sherwood N. Fender, Addison D. Fender, Martha B. Fender, William B. Bowen, Lady Kemmerlin, LLC, Brickyard Holdings, Inc., and A&K Holding Co., LLC, Defendants,

AND

William M. Bowen, Third-Party Plaintiff,

v.

James S. Kerr and Matt Trumps, Third-Party Defendants,

Of Which Hird Island Investments, Inc. and Sherwood N. Fender are the Respondents.

APPELLANTS' OPPOSITION TO MOTION TO DISMISS APPEAL

Appellants Lady Beaufort, LLC and Tideland Realty (collectively, "Lady Beaufort") oppose the motion to dismiss of Respondents Hird Island Investments, Inc. and Sherwood Fender (collectively, "Fender"). Respondents contend that the order appealed from is not immediately appealable. This argument fails; the order is a final order or, if interlocutory, is appealable because final judgment has been entered in this case.

I. BACKGROUND

As noted in Respondent’s motion, final judgment was entered by the trial court on October 26, 2018. **Exh. A.** The October 26, 2018 Order reduced the amount of the judgment previously entered by the Court on May 11, 2017, altering the Court’s prior finding that the contract between the parties provided for all of the prevailing party’s attorneys’ fees.¹

Subsequent to the October 2018 order, Fender moved in the trial court to post a bond in order to transfer the judgment lien from his assets to the bond. Because amount of the judgment was already on appeal, Lady Beaufort opposed that motion to preserve their ability to recover the proper amount of the judgment, arguing the trial court lacked jurisdiction to enter such an order while the amount of the judgment was on appeal. The trial court ruled in favor of Respondent on July 30, 2019, and this appeal timely followed. Final briefs were filed on December 31, 2019.

II. ARGUMENT

Final orders are appealable. *Culbertson v. Clements*, 322 S.C. 20, 471 S.E.2d 163 (1996). An order is interlocutory, and not final, only if it “leav[es] some further act to be done by the court before the rights of the parties are determined.” *Mid-State Distribs., Inc. v. Century Importers, Inc.*, 310 S.C. 330, 336, 426 S.E.2d 777, 780 (1993). Here, final judgment was entered prior to the entry of the order on appeal. Upon entry of the subject order, nothing was left for the trial court to do to determine the rights of the parties. Accordingly, the subject order is a final order entered after judgment and is appealable.²

¹ The reduction in attorneys’ fees in the October 26 order is currently on appeal (No. 2018-001969), as the contract in question provides—in no uncertain terms— for attorneys’ fees to the prevailing party.

² S.C. Code § 14-3-330(3) provides for appellate jurisdiction as to any “final order affecting a substantial right made in any proceeding or upon a summary application in any action after judgment.”

However, even if it were not a final order, interlocutory orders are appealable after final judgment. *See Hagood v. Sommerville*, 362 S.C. 191, 198, 607 S.E.2d 707, 710 (2005) (discussing considerations regarding appeal of interlocutory orders after judgment).

If Respondents' argument³ is accepted by this Court and that the subject order cannot be appealed despite being entered after final judgment, the effect would be that the order could never be appealed, and Appellants would be deprived of their appellate rights.

III. CONCLUSION

For the reasons here stated, Respondents' motion to dismiss should be denied.

Respectfully submitted,

EPTING & RANNIK, LLC

/s/ Jaan Rannik

Jaan G. Rannik, Esquire

46A State Street, Charleston, SC 29401

P: (843) 377-1871

F: (843) 377-1310

jgr@epting-law.com

ATTORNEY FOR APPELLANTS

This 20th day of November, 2020
Charleston, S.C.

³ An argument that Respondents did not raise in the briefing of this appeal, which was closed by the filing of final briefs in December 2019.

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Of Which Hird Island Investments, Inc. and Sherwood N. Fender are the Respondents.

PROOF OF SERVICE

I certify that I have served the Appellants' Opposition to the Motion to Dismiss Appeal on opposing counsel via e-mail, on November 20, 2020, addressed to Respondent's attorney of record, **Fred Kuhn, Esq.**, at fred@mossandkuhn.com. A copy of the e-mail is attached to this Proof of Service as Exhibit A.

EPTING & RANNIK, LLC

By

Angela Gross

Legal Assistant to Jaan G. Rannik, Esq.

Angela Gross

From: Angela Gross
Sent: Friday, November 20, 2020 3:32 PM
To: Fred Kuhn; William Bowen
Cc: Jaan Rannik; Sue Radford
Subject: Lady Beaufort / 2019-001270
Attachments: 2020 11 20 - Opposition to Motion to Dismiss Appeal.pdf

Fred,

Attached for service please find Appellants' Opposition to the Motion to Dismiss in the above-referenced appeal which is being filed through the South Carolina Court of Appeals' AIS e-filing system on today's date.

Angela

Angela Gross
Legal Assistant to Andrew K. Epting, Jr., Esquire
Jaan G. Rannik, Esquire
EPTING & RANNIK, LLC
46A State Street
Charleston, SC 29401
Telephone: (843) 377-1871
Facsimile: (843) 377-1310
agg@epting-law.com

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